

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DENNIS JOEY,
Petitioner,

v.

JIM ROBERTSON, Warden,
Respondent.

Case No. 21-09370 BLF (PR)

ORDER OF DISMISSAL

Petitioner, a state prisoner, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ Dkt. No. 1. Petitioner has yet to resolve the issue of the filing fee. *Id.* Nevertheless, for the reasons discussed below, the instant petition will be dismissed.

DISCUSSION

Petitioner claims that Pelican Bay State Prison is denying him family visitation with his wife and children without due process. Dkt. No. 1 at 3. The petition contains no claim challenging the constitutionality of his state sentence of conviction.


¹ The matter was reassigned to this Court on November 3, 2021, by order of Magistrate Judge Thomas S. Hixon pursuant to *Williams v. King*, 875 F.3d 500, 503 (9th Cir. 2017). Dkt. Nos. 5, 6.

1 Habeas is the “exclusive remedy” for the prisoner who seeks “‘immediate or
2 speedier release’” from confinement. *Skinner v. Switzer*, 562 U.S. 521, 533-34 (2011)
3 (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)); see *Calderon v. Ashmus*, 523 U.S.
4 740, 747 (1998); *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Preiser v. Rodriguez*, 411
5 U.S. 475, 500 (1973). “Where the prisoner’s claim would not ‘necessarily spell speedier
6 release,’ however, suit may be brought under § 1983.” *Skinner*, 562 U.S. at 533-34
7 (quoting *Wilkinson*, 544 U.S. at 82). In fact, a § 1983 action is the exclusive remedy for
8 claims by state prisoners that do not “lie at the ‘core of habeas corpus.’” *Nettles v.*
9 *Grounds*, 830 F.3d 922, 931 (9th Cir. 2016) (en banc) (quoting *Preiser*, 411 U.S. at 487).
10 A claim that meets the statutory criteria of § 1983 may be asserted unless it is within the
11 core of habeas corpus because “its success would release the claimant from confinement or
12 shorten its duration.” *Thornton v. Brown*, 757 F.3d 834, 841 (9th Cir. 2014) (citing
13 *Preiser*, 411 U.S. at 500). Here, Plaintiff’s claim that he is being denied visitation is
14 challenging a condition of confinement, and success on this claim would not require
15 release from custody or a shortening of his sentence. Accordingly, Petitioner’s sole
16 remedy for this claim attacking conditions of confinement is by filing a § 1983 action. See
17 *Nettles*, 830 F.3d at 931.

18 Although a district court may construe a habeas petition by a prisoner attacking the
19 conditions of his confinement as a civil rights action under 42 U.S.C. § 1983, see
20 *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971), the Court declines to do so here. The
21 difficulty with construing a habeas petition as a civil rights complaint is that the two forms
22 used by most prisoners request different information and much of the information
23 necessary for a civil rights complaint is not included in the habeas petition filed here.
24 Examples of the potential problems created by using the habeas petition form rather than
25 the civil rights complaint form include the potential omission of intended defendants,
26 potential failure to link each defendant to the claims, and potential absence of an adequate
27 prayer for relief.

CONCLUSION

IT IS SO ORDERED.


BETH LABSON FREEMAN
United States District Judge